



FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36071]

Delmarva Central Railroad Company—Lease and Operation Exemption with Interchange Commitment—Norfolk Southern Railway Company

On November 17, 2016, Delmarva Central Railroad Company (DCR), at that time a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate approximately 161.59 miles of rail line (the Line) owned by Norfolk Southern Railway Company (NSR). Notice of the exemption was served and published in the Federal Register on December 2, 2016 (81 Fed. Reg. 87,122).¹

On December 14, 2016, SMART/TD Delaware State Legislative Board (SMART/TD) petitioned the Board to revoke the lease and operation exemption.² SMART/TD asserts that the DCR's lease and operation has economic and safety considerations that should be investigated by the Board. In particular, SMART/TD claims that DCR, a company with fewer resources than NSR, cannot adequately maintain the Line's rails and bridges as they have been maintained by NSR. SMART/TD notes that the Line crosses three bridges, two of those bridges are 100 years old and the remaining bridge is 60 years old. It notes that one of the bridges was recently was out of

¹ DCR's parent, Carload Express, Inc. (Carload), filed a verified notice of exemption to continue in control of DCR upon DCR's becoming a Class III carrier. See Carload Express, Inc.—Continuance in Control Exemption—Delmarva Cent. R.R., Docket No. FD 36072. Notice of that exemption was also served and published in the Federal Register on December 2, 2016. (81 Fed. Reg. 87,123).

² No stay was sought or imposed. Because the effective date was not stayed, the exemption became effective on December 17, 2016. DCR later notified the Board that it has since consummated the transaction.

service for 30 days and questions whether DCR could have restored the bridge in the same expeditious manner as NSR, given DCR's "limited finances." It further asserts that the Line is deteriorating and maintenance will become increasingly expensive.

SMART/TD also claims that there are no insurance minimums in place for smaller carriers and that it fears that local taxpayers might be forced to carry the burden in case of a disaster.

SMART/TD also asserts that the lease will result in replacing a "qualified, experienced, and knowledgeable" labor force with "untrained and unfamiliar" employees, which, according to SMART/TD, raises safety concerns. According to SMART/TD, these concerns implicate the national rail transportation policy (RTP) goal of "operat[ing] transportation facilities and equipment without detriment to the public health and safety." 49 U.S.C. 10101(8). Moreover, citing the RTP policy goal of "encourag[ing] fair wages and safe and suitable working conditions in the railroad industry," 49 U.S.C. 10101(11), SMART/TD asserts that DCR will employ "an inferior, unqualified labor force that is willing to accept less money because they are less qualified," and that DCR's employees' wages and benefits will be inferior to those of Class I railroad employees.

DCR filed a reply on December 27, 2016. In response to SMART/TD's suggestion that DCR cannot safely operate the Line, DCR notes that it is under the control of Carload, a noncarrier holding company that owns and operates other Class III carriers. See, e.g., Carload Express, Inc.—Continuance in Control Exemption—Ohio Terminal Ry., FD 35704 (STB served Jan. 11, 2013). As such, DCR states that its owners, managers, and personnel are already familiar with the safety regulations

administered by the Federal Railroad Administration (FRA). DCR states that it will operate the Line in accordance with FRA regulations.

DCR further explains that the concerns about bridge maintenance are unwarranted. DCR states that NSR has maintained the bridges in full compliance with FRA standards and safe operating practices. DCR notes that, although one of the bridges was closed for 30 days, this was for routine maintenance and resulted from construction delays caused by weather conditions. DCR adds that it has inspected the bridges and has the knowledge and resources to maintain them.

As to concerns about wages and benefits, DCR asserts that it offers some of the best wages and benefits of any employer on the Delmarva Peninsula. DCR notes that it received more applications for employment than there are available positions. It adds that it requires all its employees to abide by all applicable safety rules and offers suitable working conditions.

DISCUSSION AND CONCLUSIONS

Because DCR's lease and operation exemption has gone into effect, SMART/TD's request will be treated as a petition to reopen and revoke the exemption under 49 U.S.C. 10502(d).³ Under 49 U.S.C. 10502(d), an exemption may be revoked, in whole or in part, if the Board finds that regulation of the transaction is necessary to carry out the RTP of 49 U.S.C. 10101. Under 49 CFR 1115.3(b), the petition must state in detail whether revocation is supported by material error, new evidence, or substantially

³ See e.g., BNSF Ry.—Trackage Rights Exemption—Union Pac. R.R., FD 35601, slip op. at 3-4 (STB served Sept. 11, 2013); Watco Holdings, Inc.—Acquis. of Control Exemption—Wis. & S. R.R., FD 35573, slip op. at 1-2 (STB served Mar. 22, 2012); Elk River R.R.—Constr. & Operation Exemption—Clay & Kanawha Ctys., W.Va., FD 31989, slip op. at 1 n.3 (STB served Apr. 11, 1997).

changed circumstances. See N.Y. Cent. Lines—Aban. Exemption—in Montgomery & Schenectady Ctys., N.Y., AB 565 (Sub-No. 14X) (STB served Jan. 22, 2004). The party seeking revocation has the burden of showing that regulation is necessary to carry out the RTP, 49 CFR 1121.4(f), and petitions to revoke must be based on reasonable, specific concerns demonstrating that revocation of the exemption is warranted and more detailed scrutiny of the transaction is necessary. See Consol. Rail Corp.—Trackage Rights Exemption—Mo. Pac. R.R., FD 32662 (STB served June 18, 1998).

Here, SMART/TD fails to establish that revocation of the exemption is necessary to carry out the RTP. Although SMART/TD has cited the RTP goals of operating without detriment to the public health and safety (49 U.S.C. 10101(8)) and encouraging fair wages and suitable working conditions (49 U.S.C. 10101(11)), it has not shown that regulation is necessary to carry out these goals.

The Board takes safety concerns seriously; however, SMART/TD's concerns here are vague and speculative and do not arise from any demonstrated shortcomings specific to DCR. DCR has expressed a commitment to abide by FRA regulations, and its parent, Carload, is familiar with FRA's requirements. As to maintenance, DCR states that it has already inspected the bridges and has explained the one extended bridge closure cited by SMART/TD. Furthermore, NSR's contract with DCR obligates DCR to comply with FRA standards of operation, to maintain the tracks at standards specified by NSR, and to carry certain insurance policies covering incidents that might occur while operating the Line.

SMART/TD's concern about DCR's having fewer resources than NSR, the Line's Class I owner, also does not warrant revocation. Class I carriers routinely spin-off lines

to newly formed Class III carriers, and SMART/TD has not demonstrated that DCR will be any less prepared to assume the responsibility to maintain and operate the Line that any other new Class III carrier would be. Moreover, as DCR notes, its parent company, Carload, is an experienced shortline operator. DCR explains that Carload's railroads "have strong safety records and there have been no FRA or STB reported allegations that its shortline employees have been treated unfairly or required to operate in unsafe conditions;" SMART/TD has offered no evidence to the contrary. SMART/TD has also failed to show that the labor impact here is different from, or greater than, the impacts typically associated with the acquisition of a rail line by any new carrier.

For the foregoing reasons, SMART/TD has not shown that reopening and revocation are supported by material error, new evidence, or substantially changed circumstances, or that applying the Board's regulation to the transaction is necessary to carry out the RTP. Accordingly, the Board finds no basis to revoke DCR's exemption or begin a revocation proceeding.

It is ordered:

1. SMART/TD's petition to revoke DCR's exemption is denied.
2. This decision is effective on its date of service.

Decided: March 1, 2017.

By the Board, Board Members Begeman, Elliott, and Miller.

Raina S. Contee

Clearance Clerk

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